

1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF NEW JERSEY

4
5 IN RE: VALSARTAN PRODUCTS CIVIL ACTION NUMBER:
6 LIABILITY LITIGATION 1:19-md-02875-RBK-JS

7
8 STATUS CONFERENCE
(Via telephone)

9
10 Wednesday, September 16, 2020
11 Commencing at 4:05 p.m.

12
13 B E F O R E: THE HONORABLE JOEL SCHNEIDER,
14 UNITED STATES MAGISTRATE JUDGE

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1 (ALL PARTIES VIA TELEPHONE, September 16, 2020,
2 4:03 p.m.)

3 THE COURT: We're on the record in the Valsartan
4 litigation, Docket No. 19-2875.

5 Can we have the names of lead counsel for the
6 plaintiffs and the defendants on the phone and whoever else
7 may talk, just put your name on the record before you speak
8 and can I ask whoever is not speaking to put their phone on
9 mute because it sounds like someone is either at a soccer game
10 or driving.

11 So thank you.

12 Plaintiffs, I'll hear from you first.

13 MR. SLATER: Hello, Your Honor, Adam Slater for
14 plaintiffs.

15 MR. HONIK: Good afternoon, Your Honor, Ruben Honik
16 for plaintiffs.

17 MS. WHITELEY: Good afternoon, Your Honor, Conlee
18 Whiteley for plaintiffs.

19 THE COURT: And defendants.

20 MR. GOLDBERG: Good afternoon, Your Honor, this is
21 Seth Goldberg for the ZHP parties and defense group.

22 MS. LOCKARD: Hi, Judge, it's Victoria Lockard for
23 the Teva defendants and defense.

24 MR. TRISCHLER: Good afternoon, Your Honor, Clem
25 Trischler for the Mylan defendants and the defense group.

1 MR. GEOPPINGER: Good afternoon, Your Honor, Jeff
2 Geoppinger for wholesaler defendants and AmeriSourceBergen.

3 MS. JOHNSTON: Good afternoon, Your Honor, Sarah
4 Johnston on behalf of the retailer pharmacy defendants as well
5 as CVS and Rite Aid.

6 THE COURT: Great. It sounds like we have lead
7 counsel entered their appearance.

8 Mr. Slater, if I missed it, I'm sorry, I didn't see
9 any communication from you. That's fine. Do I take it I
10 didn't miss anything?

11 MR. SLATER: No, Judge, you didn't miss anything.
12 Mr. Goldberg would on behalf of both of us to advise about the
13 status. I know that based on your e-mail, I certainly can
14 give you a sense of where we are, but we didn't feel it was an
15 issue to tee up as opposed to just having a discussion per
16 your e-mail about the status of the productions.

17 We certainly do have some questions. We have some
18 concerns, but based on the tenor of the last call, we felt
19 like it probably made sense just to discuss it and really from
20 our perspective, kind of the ball is in the defense's court at
21 this point to tell us when they're going to, you know, finish
22 certain parts of the production and how they're doing.

23 Because, for example, we don't have -- we don't
24 believe we have all the chromatography which is the key test
25 done way back when, when they were testing the API and the

1 solvents. We don't believe we have all the test results for
2 NDMA or nitrosamine levels.

3 And as far as I know, we don't have all of the
4 Novartis-related documents, for example, from ZHP.

5 So our question really is, when are these core key
6 prioritization issues going to be -- or productions going to
7 be completed and, you know, to start to get, you know, some
8 sense of when these key documents will be produced.

9 THE COURT: Is your question primarily directed to
10 ZHP?

11 MR. SLATER: Well, it's directed to all defendants,
12 frankly. The Novartis issue relates specifically to ZHP and
13 is such a key issue in the litigation that, you know, it's
14 something that's worthwhile for us to raise, because as Your
15 Honor knows, that's how the contamination became known was
16 when Novartis tested the API that was provided to them by ZHP
17 and then found that there was these impurities and got to the
18 bottom of it.

19 THE COURT: Well, Mr. Goldberg, why don't you start.

20 MR. GOLDBERG: Your Honor, I mean, this is -- let me
21 just say, this is not an issue that we expected to be
22 discussing today. You know, I raised with Mr. Slater on
23 Monday, if there were issues that he wanted to raise with the
24 Court, said no, and e-mailed Your Honor yesterday and the
25 theme that we thought we were going to be talking about today

1 was depositions. We haven't gotten a request from plaintiffs
2 for a meet and confer about our document production, but I
3 will take you back to the last conference we had with Your
4 Honor, where we -- this was raised again for maybe the fifth
5 or sixth time since Your Honor ruled about prioritization, and
6 Your Honor said then, when Your Honor first ruled about it,
7 and again after the last conference, that we, defendants, are
8 satisfying our obligation to produce documents in a priority
9 order pursuant to the rolling production schedule Your Honor
10 has set. There's no indication that any defendant is holding
11 documents back.

12 As I mentioned last time, no defendant appears to be
13 setting up to do a document dump at the end of their
14 production because of the custodial productions, some
15 custodial documents are going to be rolled out at different
16 points in time, but we're working to prioritize plaintiffs'
17 custodial requests.

18 So there's not a ripe issue to be discussing, there's
19 not an issue that we have met and conferred about. I think
20 the parties are doing exactly what the Court has asked us to
21 do and we have -- I know that at least for ZHP, we continue to
22 produce documents, not just on the first of the month, as Your
23 Honor has ordered, but, you know, throughout the month to keep
24 our rolling productions going.

25 You know, but what we felt we were going to be

1 talking about was the deposition scheduling and the protocol,
2 but happy -- and happy to address that and do have a couple of
3 things we wanted to bring to the Court's attention with
4 respect to the depositions.

5 THE COURT: I thought Mr. Slater is asking a pretty
6 simple straightforward question. For example, when is he
7 going to get the Novartis documents?

8 MR. GOLDBERG: And, Your Honor, right, I mean, a lot
9 of the Novartis documents have been produced and, you know, I
10 mean, are ready in core discovery to the extent that they were
11 in core discovery. To the extent that there are documents
12 relating to Novartis in custodial files, they will be produced
13 in the ordinary course of producing the custodial files.

14 THE COURT: Are you satisfied, Mr. Slater?

15 MR. SLATER: Well, beauty is in the eye of the
16 beholder, but, you know, I just think at this point, what's
17 key, that it's reasonable for the defendants to be able to
18 tell us when those discrete areas of production will be done.
19 I mean, we did raise this last month. I wouldn't have raised
20 the issue, but Your Honor, in your e-mail, suggested that you
21 wanted to go through the status and talk about it, that's why
22 I thought it was a reasonable thing to ask on the test results
23 with Novartis, because they're just so paramount and it's hard
24 for us to understand, at this point how, frankly, all those
25 things haven't been produced already, and I just thought it

1 was reasonable to ask when is that going to be done because at
2 some point, if the answer keeps being, you know, you'll get it
3 when you get it, I think it becomes a concern because, like,
4 for example, our experts need it, our, you know, we needed to
5 start to think about depositions of witnesses in this country.

6 MR. GOLDBERG: Your Honor, here we are again. This
7 is exactly what we discussed a few weeks ago. This is trying
8 to relitigate this issue about their prioritization, which we
9 are adhering to. We are producing testing information. We
10 have been in touch with Barekh Parekh who is on the
11 plaintiffs' leadership committee. We're discussing with him
12 the production of batch records, making production of that
13 information. They're getting the testing information. As
14 with any rolling production, they're not -- no defendant is
15 going to produce all of the documents in the first production.

16 And we are doing exactly what the Court has ordered
17 us to do, which is to produce the documents based on their
18 prioritization order in good faith on a rolling basis, and
19 some of that will be in custodial files. To the extent some
20 of the custodians are -- have been prioritized by plaintiffs
21 and they have that information, it will be produced in their
22 files.

23 But we are working diligently with Mr. Parekh to make
24 sure that our production is fulsome and satisfies plaintiffs'
25 prioritization. And again, none of these issues have been

1 raised with us, so this is really coming out of left field a
2 bit, and what it does seem to be is a refrain, sort of a
3 continual refrain by Mr. Slater in the hopes that Your Honor
4 will revisit the order on a rolling production.

5 THE COURT: Mr. Slater, let me suggest that if you
6 want to follow up on this issue, raise it in the letter that
7 you'll submit to the Court in two weeks and we'll have a more
8 fulsome discussion about this.

9 Mr. Goldberg has made some representations on behalf
10 of his client. He can't speak to the other clients, but if
11 you want to tee up an issue for discussion, put it in a
12 letter, the agenda letter that's going to be in connection
13 with the meeting at the end of the month, and we'll address it
14 in more detail if we have to.

15 I think I recollect, I don't have the order in front
16 of me, Mr. Goldberg, but something to the effect that the
17 parties had to use reasonable good faith efforts or something
18 to that effect --

19 MR. GOLDBERG: Correct, Your Honor.

20 THE COURT: -- to produce these types of documents.

21 If counsel made that representation, well, it's going
22 to be accepted and we'll have to deal with the documents when
23 they're produced.

24 If plaintiff is not satisfied that that's being done,
25 we'll deal with it. Okay? So in other words, if there's an

1 issue to discuss, put it in the agenda in writing and we'll
2 address it at the next conference.

3 MR. SLATER: Understood.

4 THE COURT: Okay. Insofar as the deposition issue is
5 concerned, my primary concern is, I just want to keep the case
6 on track. It's not unexpected that we're in a little bit of a
7 lull now because the defendants are in the midst of their
8 document production. You're working on the briefs, you're
9 waiting for the decisions on the motions to dismiss, but I
10 like to look ahead a couple of months and I don't want to
11 start thinking and planning for depositions in November and
12 December. I want to get the depositions rolling by then.

13 I made a list of certain deposition issues that we
14 need to address between now and, you know, in the next 60 or
15 90 days. Before we know it, you know, we're going to be in
16 December and I think it's important to get our ducks in order
17 before then, rather than start to think about some pretty
18 sticky issues, in this case especially, sooner rather than
19 later.

20 So that's why I thought it would be helpful to have
21 the discussion about depositions. Now, the Court is not
22 prepared to make any rulings now, but I just want to make sure
23 we get a process in motion to deal with these issues and get
24 them resolved in the next 60 or 90 days.

25 So I don't know, Mr. Slater, was it you or

1 Mr. Goldberg who said there were certain deposition issues you
2 wanted to raise?

3 MR. GOLDBERG: That was me, Your Honor, Seth
4 Goldberg.

5 THE COURT: Okay.

6 MR. GOLDBERG: Yeah, Your Honor, I think there's one
7 thing that -- I mean, there are a few different things, of
8 course, you know, we provided plaintiffs with the deposition
9 protocol on September 2nd. We've communicated with them today
10 about setting up a meet and confer to talk about the
11 deposition protocol. Hopefully we can get that -- do that
12 this week and make some progress.

13 You know, I think there are some things in the
14 protocol itself which we can discuss with them, but, you know,
15 certainly want the Court to be aware of, that could affect the
16 timing of depositions that are reflected in our comments.

17 Of course, you know, the COVID situation may impact
18 the timing of depositions, particularly with respect to
19 foreign witnesses. There's going to be -- there are going to
20 be a few different challenges with foreign deposition
21 witnesses. And I'll give you one challenge, which is a
22 logistical challenge. Even if we're doing Zoom depositions,
23 you know, we've got parties in very different time zones. I
24 can see that is going to make the deposition process pretty
25 challenging, when you've got folks in Southeast Asia and India

1 and they are 10 to 12 hours ahead, that's going to, you know,
2 make things a little bit of a challenge.

3 You've got -- we've got different rules in the
4 various locales about deposing foreign witnesses that are
5 going to be pertinent. There are certain restrictions as to
6 depositions of Chinese nationals, for example. I'm not aware
7 of the specific issues with respect to Indian nationals, but
8 there are -- there are restrictions on deposing some of the
9 foreign nationals under their home laws that we'll have to
10 deal with.

11 And we've raised that in the protocol, we'll discuss
12 it with them. You know, there are going to be issues about
13 physical depositions, too, which we think, you know, of
14 course, until COVID, that's how we did things. We hope to get
15 to a point in this -- in these proceedings relatively soon
16 where we can do physical depositions.

17 I just wanted to flag a few of these issues that we
18 raised in the protocol, but one thing when I got your e-mail
19 yesterday and you mentioned deposition scheduling. One of the
20 challenges, I think, for us, is sort of prioritizing plaintiff
21 depositions and which, you know, plaintiffs we will be
22 deposing and when we will be deposing them.

23 And this really gets to a -- Your Honor may recall
24 that for purposes of filling out defendant fact sheets, the
25 Court on ECF 360, the Court limited the number of plaintiffs

1 that would be the subject to defendant fact sheets, the 20
2 defendant fact sheets, and we haven't yet, in this case,
3 talked about, you know, what a bellwether process might look
4 like.

5 Of course, that's way down the line, but what we want
6 to make sure is that there are a sufficient number of
7 plaintiffs deposed, so that when we get to that process,
8 there's a pool of plaintiffs to choose from, and, you know,
9 we, defendants, intend to depose plaintiffs in addition to
10 those 20 that were identified for the defendant fact sheets.

11 There is a time lag in terms of collecting medical
12 records, doing discovery, written discovery of personal injury
13 plaintiffs, class representatives, and the TPP class
14 representatives that, you know, we need to account for. We
15 want to take that discovery and get those plaintiffs ready to
16 be deposed as well.

17 So I think one question is, you know, the 20
18 plaintiffs that have been selected for defendant fact sheets,
19 do plaintiffs intend to have those be part of the pool for
20 eventual bellwether workup. If so, you know, we would want to
21 take additional discovery of them. And also we intend to
22 serve discovery, Rule 34 requests, on the consumer class reps
23 and the TPP class reps very soon, so that we can get those
24 plaintiffs ready for deposition.

25 THE COURT: Before you respond, Mr. Slater, let me

1 just add a couple of comments. One is, I couldn't agree with
2 you more that there are very, very sticky issues regarding
3 logistics of deposition scheduling. You just touched on some
4 of the issues, Mr. Goldberg. I'm sure there's a lot more.
5 That's why it's important that we start talking about these
6 issues now sooner, rather than later.

7 With regard to the plaintiffs, I'm glad you mentioned
8 that, because I think that's going to be a lot easier than
9 dealing with the defendants and all of their issues.

10 I assumed that you're going to want to depose every
11 class representative plaintiff. Am I right about that,
12 Mr. Goldberg?

13 MR. GOLDBERG: Yes, you are. The consumers and the
14 TPPs.

15 THE COURT: Right. And what I was hoping, we could
16 start on this phone call talking about it, but probably
17 finalize it at the end of the month, I want to give you a
18 deadline to complete those depositions. So whether it's the
19 end of February, the end of March, the end of April, I don't
20 know, I want to talk about it with you, but I think there's,
21 what, 35 plus or minus class reps in the case?

22 MR. GOLDBERG: Right.

23 THE COURT: So you'll get them. That's easy.

24 Frankly, I haven't given any thought yet to this,
25 quote unquote, the representative bellwether issue. I think

1 we need to get Judge Kugler's input on what he's thinking in
2 that regard and then we can decide how to deal with that.

3 But it's like low-hanging fruit, you're going to take
4 the class rep's deps over the next couple months, talk about
5 what deadlines you propose to get that done, and we'll issue
6 an order and away we go.

7 MR. GOLDBERG: Right. I mean, let me -- can I just
8 provide a little clarity on the personal injury plaintiffs'
9 fact sheets? I mean, the reason I raised it in the context of
10 the bellwethers is, you know, those 20 plaintiffs who are
11 going to be going through the defendant fact sheet process,
12 you know, once we take their depositions, which, you know,
13 we'd like to do, you know, as soon as we have gotten through
14 all of their medical records and we've gotten the discovery
15 from those personal injury plaintiffs that we need, you know,
16 those are a potential -- those cases will have been worked up.
17 Of course, those were cases that plaintiffs selected to do
18 this 20 defendant fact sheet process.

19 You know, certainly defendants would like the
20 opportunity to select at least 20 plaintiffs, if, you know, to
21 work up. If the Court were -- if the Court were going to say
22 that those 20 that were originally selected by plaintiffs were
23 going to be part of the bellwether pool, then we would want to
24 have at least 20 so that there's parity in terms of the
25 selection, you know, of a pool for the bellwether process.

1 There's nothing indicating in the Court's original
2 order that those 20 were intended to be for the bellwether
3 process, or even to be deposed. There's a lack of -- we kind
4 of need that guidance, I think --

5 THE COURT: Yep.

6 MR. GOLDBERG: -- from the Court so that we can --
7 because we want to get plaintiffs' personal injury depositions
8 going, and because there are so many personal injury
9 plaintiffs, you know, we can't -- we need to have an ability
10 to prioritize them as well, you know, for collection of
11 medical records and to review them and to work them up for
12 depositions. We can't -- we don't want to be working up 500
13 depositions, but we do want to be working up some number that
14 reflects a parity in terms of selecting them for being worked
15 up.

16 THE COURT: You said something that I think hits the
17 nail on the head, Mr. Goldberg. You're right, the Court has
18 said nothing that these 20 are going to be bellwether
19 plaintiffs. The Court also never indicated or said that
20 defendants automatically have the right to depose those 20.

21 So maybe you will, maybe you won't. Maybe you'll get
22 some of them. It's just an issue that has to be discussed. I
23 really do think we need to get Judge Kugler's input on what he
24 envisions for this bellwether process before we start talking
25 about selecting bellwethers.

1 So I would sort of put that issue aside. Like I
2 said, the low-hanging fruit is the class action plaintiffs.
3 You're going to get those, so you should start talking about
4 the logistics of taking those depositions, and like I said, a
5 proposed reasonable deadline to start and complete those
6 depositions. Okay?

7 So, you know, I'll alert Judge Kugler to this
8 concern, and maybe it's an issue we could talk about at the
9 end of the month when we have the general monthly meeting.
10 All right?

11 MR. GOLDBERG: Sounds good.

12 THE COURT: So that's the plaintiffs.

13 Mr. Slater, I just wrote down a couple of issues that
14 -- regarding the defendants' depositions. You know, are you
15 going to take 30(b)(6) depositions? Did you serve your
16 notices yet? When are you going to be in a position to
17 identify who you want to depose from the manufacturing
18 defendants, the API and finished dose manufacturers? Where
19 are the depositions going to be? What are you going to do about
20 interpreters? Are we going to do them by Zoom? What do we do
21 about exhibits? Are you going to take any third-party
22 depositions? Do you want other defendants in addition to the
23 manufacturing defendants? What's a reasonable fact discovery
24 deadline, on and on and on.

25 What do plaintiffs have planned? What are they

1 thinking, and is it appropriate for you to meet and confer
2 with each individual defendant? I assumed you're going to
3 start with the API and finished dose manufacturers. Is it
4 appropriate for you to meet with them each individually, or
5 first deal with sort of the big picture issue, the macro
6 issues and then bore in on each individual party?

7 MR. SLATER: Your Honor, it's Adam Slater for the
8 record. I think that the starting point is that we really
9 need to focus in on what we're working towards per the
10 discussions we had a while back. It is our understanding as
11 the plaintiffs that we're going to be --

12 (Court reporter asks counsel to repeat.)

13 MR. SLATER: That we're going to start out with an
14 economic loss trial and our feeling is that once we know who
15 the parties are going to be in that case, if we get some
16 indication or guidance, we can focus our efforts on those
17 particular parties that will be the defendants at that trial,
18 because it will be more efficient for us to focus defendant by
19 defendant most likely. That would seem to make the most
20 sense.

21 In terms of when we're ready to serve corporate rep
22 notices and everything else, and whom we're going to depose,
23 we're not even close because we're waiting for the documents
24 and waiting for some sort of signal that, you know, some
25 majority or critical mass of the key documents have been

1 produced so we can start to make decisions and feel confident
2 that we did what we started to do.

3 So I think, you know, we're a little bit behind on
4 that, but once we know who we're focusing on, I think we can
5 focus, you know, a little more efficiently and maybe, you
6 know, go party by party or defendant by defendant as we know
7 who we're focusing on for the first trial, and for, you know,
8 class cert purposes as well, you know, in trial.

9 And then just one other word. Counsel spent a lot of
10 time talking about the personal injury plaintiffs and I just
11 wanted to just point out, as I just did, our understanding is
12 we're trying an economic loss trial, so we're not sure why the
13 defendants would be talking about focusing resources that are
14 going to be spread between the parties on deposing plaintiffs
15 for a process that is secondary.

16 It's not that we don't want to do it, it's just that
17 there's only so many depositions that can be taken and there's
18 a lot of plaintiffs to be done. So I think we're going to
19 have to talk about the staging, and today is not the day for
20 it, but I think that that's something that, you know, I think
21 that we just need to keep in mind, as I heard counsel talking,
22 because it's obvious there's this focus on the personal injury
23 part of the case, but we're trying to focus on preparing for
24 class certification and a trial on economic loss.

25 THE COURT: Mr. Slater, we can't -- we're not going

1 to wait and start dealing with these deposition issues until
2 the motions to dismiss are decided and you get a final word
3 from Judge Kugler about how he's going to try this case.

4 The present plan is to try the economic case first,
5 and until that changes, that's the plan. But I don't know
6 when those motions to dismiss are going to be decided.
7 Hopefully, they will be decided before the end of the year,
8 but we cannot wait until the end of the year to start talking
9 about who the plaintiffs are going to depose. We have to
10 start doing that now.

11 So, I mean, assume we're proceeding with the economic
12 trial first and then plan your strategy that way, and whether
13 your contingency plan is to go after and depose each API and
14 finished dose manufacturer and if ultimately, you drop one or
15 two, that's fine, but we gotta move forward on the case, and
16 another comment is, I'm not really sure, to be perfectly
17 frank, you'll have to explain this to me, but why you have to
18 wait to serve a 30(b)(6) notice until you get all your
19 documents.

20 I mean, don't you pretty much know what topics you're
21 going to question this 30(b)(6) deposition witness about now?
22 Why do you have to wait until you get all these documents?

23 MR. SLATER: Oh, Your Honor, I wasn't suggesting that
24 we can't serve 30(b)(6) notices. I was talking more about --
25 you know, and it helps, it helps us to hear what you're

1 saying. I was focused more on which parties are we going to
2 be deposing witnesses from, and what order, and which
3 custodians will they be, and I was sort of saying that's
4 something that's off -- we don't -- there's no way for us to
5 know that yet.

6 30(b)(6) notices -- we can serve 30(b)(6) notices and
7 if the documents come in or if something comes up, I suppose
8 we can, you know, supplement them if necessary. But, no, I
9 wasn't saying that.

10 THE COURT: Okay. So I guess the message I'm trying
11 to get across is, it's an amazingly complex situation that's
12 complicated by the fact that we have foreign defendants and
13 we're in the midst of this pandemic. So it's a perfect storm.

14 But have to deal with what we have and we have to
15 forge through it and move forward.

16 So let's talk about -- I think it's appropriate to
17 serve 30(b)(6) notices, let the defendants object, let's get
18 those objections resolved, if you have to tweak the notices
19 and if you have to supplement them, fine, we'll do it. But
20 that's one area where I think we can start to move forward.

21 And correct me if I'm wrong, I'm assuming you're
22 going to target the manufacturing defendants. Am I wrong
23 about that?

24 MR. SLATER: No, you're absolutely correct.

25 THE COURT: Okay. So --

1 MR. GOLDBERG: Your Honor, this is Seth Goldberg.
2 Can I just chime in on one point that I think is important at
3 least from the defendants' standpoint?

4 THE COURT: Sure.

5 MR. GOLDBERG: Which is the notion that the economic
6 loss case is proceeding ahead of the PI case, and I do recall,
7 we spent a lot of time in February and March briefing this
8 issue for Judge Kugler and ultimately in April, you know, when
9 Judge Kugler granted defendants the permission to file Rule 12
10 motions, Judge Kugler was very clear that he was not, at that
11 point, making any determinations as to how the proceedings
12 would go after Rule 12 in terms of, you know, whether PI,
13 class certification would be prioritized.

14 We certainly think and the Court, both Your Honor and
15 Judge Kugler have said in the past that there is absolutely no
16 reason we shouldn't be proceeding on a parallel track with
17 respect to discovery, and to be doing the PI discovery,
18 discovery as to the manufacturing issues and in particular,
19 the science and the causation issues. And Your Honor may
20 recall that we, you know, we intend to propose a schedule with
21 Judge Kugler to make sure that the causation issues are being
22 tracked on a parallel basis, which is, you know, and as you
23 mentioned in the last call, the Zantac litigation, the science
24 issues are in the forefront and the Court there has set a
25 schedule for deciding the *Daubert* issues relating to the

1 science, and we've never understood this Court to say
2 discovery shouldn't proceed on a parallel basis, and we intend
3 to move forward in that way.

4 THE COURT: What this Court said was the current
5 default setting is that the first trial was going to be the
6 economic trial. I recollect Judge Kugler saying that he's
7 considering the defendants' submissions and will make a final
8 decision on how to proceed after those motions are decided.

9 His opinion may change, but we have to move forward
10 and he has indicated his preference, at least initially, not
11 finally, but initially, to proceed on the economic. So in
12 terms of priorities, that's the priority. Nothing has been
13 said about bifurcating discovery or severing discovery, and we
14 will deal with those issues.

15 Your position is clear that you want to fast track
16 the personal injury causation issues, and that's fine, we'll
17 deal with those issues. I'm asking plaintiff to start getting
18 the wheels in motion for what they propose and we'll deal with
19 the defendants, we're starting with the class action
20 plaintiffs and we'll deal with the other issues. Eventually,
21 this will all coalesce into a final plan.

22 The Judge in *Zantac*, you know, they know their case
23 and she's going to decide what to do in that case and Judge
24 Kugler is going to decide what to do in this case.

25 So let me go back to my question. Mr. Slater, when

1 do you -- when will you serve your 30(b)(6) notices without
2 dates for the deposition, and then we'll set a date for the
3 defendants to serve their --

4 MR. SLATER: I would say -- I would say soon, we
5 could serve them, you know, a few weeks, on the outside.

6 THE COURT: Two weeks?

7 MR. SLATER: I think on the outside, I think that we
8 can do that.

9 THE COURT: Okay. And then -- and then let's say two
10 weeks for objections, and then the parties will meet and
11 confer and -- like we have done in the past, we'll resolve
12 those objections and then by the time we resolve those
13 objections, we may have a plan for when these depositions are
14 going to take place and where and all the other logistical
15 issues.

16 Are there any third-party depositions you're going to take,
17 Mr. Slater?

18 MR. SLATER: Potentially. There's certainly an eye
19 on Novartis. We have to get the rest of the documents and see
20 if there's a need, and there may be some other companies that
21 were involved in some CGMP evaluations and analysis as
22 contractors to defendants, especially the -- obviously the
23 manufacturers and there may be a few others. So I would think
24 there probably will be some third-party depositions, yes.

25 THE COURT: Okay. So it might be helpful if you

1 identify those and I guess you're going to serve document
2 requests with those as well?

3 MR. SLATER: I would expect so, yes.

4 THE COURT: Well, why don't you start talking with
5 your group about preparing those subpoenas and serving them.
6 I would expect if things go as they usually do, we'll get
7 objections from the recipients and we'll have to deal with
8 those, but like I said, it's good to get the wheels in motion.

9 I don't know why there has to be a delay on that if
10 you want to get Novartis's documents. Are you going to serve
11 a document subpoena before a deposition notice on those third
12 parties?

13 MR. SLATER: I believe that we've served some
14 document requests already for just documents, or at least they
15 were prepared. Somebody can correct me who's on the call with
16 our team. I know they were being done. I can't remember if
17 they were served or not.

18 So I would think that it's probably better to try to
19 get the documents in advance, so I would expect that's what
20 we'll do and we'll try to work with whichever companies or
21 entities that we reach out to, to try to work through a
22 schedule that makes sense to get the documents first and
23 schedule the depositions.

24 THE COURT: Okay. So maybe by the end of the month,
25 you could at least identify the third-party subpoenas you're

1 going to serve, the documents only, and then we'll get a date
2 for the service of those so we can get that rolling, okay?

3 MR. SLATER: Absolutely.

4 THE COURT: Okay. So far on this call, the parties
5 are going to meet and confer about deposing the class action
6 plaintiffs and proposing a reasonable start and end date.

7 Defendants, the plaintiffs are going to serve their
8 30(b)(6) notices in two weeks, two weeks to object, and then
9 the parties will meet and confer, and we'll deal with those.

10 The parties are going to meet and confer on the
11 deposition protocol by the end of the month. Plaintiffs are
12 going to identify who they're going to serve, preliminarily
13 without waiver of the right to serve other subpoenas,
14 third-party document subpoenas, too, so we can get that ball
15 rolling.

16 What else can we do to sort of advance the ball on
17 these deposition issues? If anything?

18 MR. HONIK: Your Honor, this is Ruben Honik. I just
19 wanted to tease out a closely-related issue, and first begin
20 by saying that on the plaintiffs' side, we have been operating
21 from the default understanding that we've been carrying since
22 late winter, early spring, that we were going to be looking at
23 an economic class briefing schedule and some sort of a trial,
24 and so in reverse engineering that, we've certainly been
25 absolutely ready and we are prepared to work with defendants

1 to produce all of our class reps, but what remains an open
2 issue is, it's unclear whether the Court will expect
3 plaintiffs to file an omnibus Rule 23 motion, that is to say,
4 a motion that encompasses all the parties or some subset of
5 the parties, just the API, just the manufacturers. You'll
6 recall that we discussed that at some length as well.

7 And I bring it up now only because it may help to
8 give us direction about where we want to focus our efforts in
9 identifying deponents, as well as teasing out 30(b)(6) issues.

10 So, for example, if Judge Kugler were to decide, and
11 I'm just making this up hypothetically, that the first
12 economic class briefing that he and the Court wishes to see
13 pertains only to, say, API and finished dose manufacturers.
14 That would obviously help to guide us in determining who we
15 want to conduct discovery in relation to that briefing and the
16 would-be trial.

17 And so I just point that out because obtaining some
18 direction from the Court, at some point sooner than later,
19 about the scope of that economic class that you want us to
20 both brief and potentially try, that would help I think all
21 the parties enormously to focus our energies on properly
22 noticing and sequencing discovery.

23 MR. GOLDBERG: Your Honor, this is Seth Goldberg. If
24 I may, this is precisely the issue that we covered with Your
25 Honor and Judge Kugler in February and March. Defendants

1 advocated for omnibus class certification briefing. Happy to
2 send Your Honor and Judge Kugler those filings again, but
3 there were a number of different reasons supporting having an
4 omnibus class certification brief, and this was the issue that
5 Judge Kugler said on April 24th, I believe it is, when he
6 granted the Rule 12 motion, I'm not going to decide this
7 issue, I'm not going to decide, you know, how we're going to
8 proceed until I've resolved this Rule 12 motion.

9 And, you know, it's still our position for all of the
10 reasons set forth in those letters that there should be
11 omnibus class certification briefing.

12 THE COURT: I don't disagree with you, Mr. Goldberg.
13 Judge Kugler said that, my recollection is, is that after the
14 motions to dismiss are decided, in effect, he would regroup
15 and make a final decision how to proceed. I don't disagree
16 with you there. But I think the present default setting is
17 what he indicated, that we're going to proceed with the
18 economic trial first.

19 Mr. Honik, you asked for more direction. In a
20 perfect world, I wish we could give it. And you could raise
21 this issue again with Judge Kugler at the end of the month,
22 but I thought he already made his position clear, which I
23 thought was reasonable, that until the dust settles and he
24 decides those motions, he can't make a final decision.

25 MR. HONIK: Understood, Your Honor. It just means

1 that in sequencing and scheduling discovery of the deponents
2 that we're going to have to, you know, be broader in scope, if
3 you will, if we're -- to move forward, and we will.

4 THE COURT: And I think we also have to be
5 flexible --

6 MR. HONIK: Yes.

7 THE COURT: -- because we may have plans in motion,
8 and depending upon how the motions are decided and what Judge
9 Kugler eventually decides how to proceed, we may have to
10 adapt. But you're all sophisticated, experienced, skilled
11 litigators and that's what you do every day.

12 Otherwise, the case is just going to grind to a
13 standstill and we just can't have that, we just can't have
14 that.

15 Okay. So again, just to summarize, we have
16 plaintiffs' deps, we're going to discuss start and end dates.
17 We talked about the 30(b)(6) dep notices. You're going to
18 talk about the deposition protocol and all the sticky issues
19 we have to deal with. We'll get a list of third-party
20 subpoenas.

21 Of course, I'll inform Judge Kugler about what we
22 discussed, and, you know, you could raise whatever issues you
23 want at the end of the month, and if he can provide us with
24 any greater insights on how he intends to proceed, it
25 certainly would help, but I'm not sure that's possible under

1 the circumstances, under the difficult circumstances we're all
2 facing.

3 Any other issues we need to address?

4 MR. GOLDBERG: Your Honor, there's one last issue,
5 which is that Judge Kugler had suggested that the next
6 conference will be in person, and I know there are a number of
7 people around the country that, you know, want to figure out
8 what that really means for them, given travel restrictions and
9 quarantines and whatnot, and if the Judge intends to have it
10 in person or is going to do it by Zoom. He said he would get
11 back to us closer to the time of the conference.

12 THE COURT: I'll touch base with Judge Kugler as soon
13 as possible. My gut reaction is, I don't think it's going to
14 happen this month, but I just want to confirm with Judge
15 Kugler. I'll get word to you ASAP.

16 I wouldn't count on it, but I'm not making the final
17 decision.

18 MR. GOLDBERG: Okay. Thank you.

19 THE COURT: Anything else, Counsel?

20 MR. GOLDBERG: Not for defendants, Your Honor.

21 THE COURT: Okay. I thank you all for your time, and
22 we'll proceed at the end of the month. I'll get word to you
23 ASAP about whether it's going to be in person or by phone.
24 Thank you very much. We're adjourned.

25 RESPONSE: Thank you, Judge.

1 (4:53 p.m.)

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3

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.

6

7 /S/ Karen Friedlander, CRR, RMR
8 Court Reporter/Transcriber

9 September 16, 2020
10 Date

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